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ANNUAL REPORT

OF THE

BOARD OF CANAL COMMISSIONERS,

WITH

ACCOMPANYING DOCUMENTS,

For the fiscal year ending November 30, 1858.

A. BOYD HAMILTON, State Printer.

James
McDonnell

THOMAS ADAMS

BOARD OF CHARTER COMMISSIONERS

1870

WOMEN'S BOARD OF CHARTER COMMISSIONERS

THE BOARD OF CHARTER COMMISSIONERS

THE BOARD OF CHARTER COMMISSIONERS

COMMUNICATION.

CANAL COMMISSIONERS' OFFICE,
Harrisburg, December 28, 1858. }

To His Excellency, WM. F. PACKER,
Governor of Pennsylvania:

SIR:—I have the honor to transmit, herewith, the annual report of the Board of Canal Commissioners, for the fiscal year ending the 30th of November, 1858.

I have the honor to be,

Very respectfully,

Your obedient servant,

A. PLUMER, *President.*

COMMITTEE.

United States Government,
Washington, D.C. 20540.

To His Excellency, W. E. Brown,

Secretary of Agriculture.

Sir:—I have the honor to transmit herewith the annual report of the Board of Civil Commissioners for the fiscal year ending the 30th of December,

1898.

I have the honor to be,

Very respectfully,

Your obedient servant,

A. LEITCH FLEMING.

R E P O R T .

The Canal Commissioners respectfully submit the following report for the fiscal year ending the 30th of November, 1858 :

In pursuance of the act of the 21st of April, 1858, entitled "An Act for the sale of the State canals," the canals then belonging to the Commonwealth were transferred by the Executive to the Sunbury and Erie railroad company, on the 20th of May last.

By a joint resolution of the Legislature, approved the 22d of April, 1858, entitled "Resolution relating to the public works," it was enacted, "that from and after the passage of a law authorizing the sale of the public works to the Sunbury and Erie railroad, or to any other corporation, or to an individual, or an association of individuals, no moneys shall be drawn from the Treasury to be applied to the repairs of the State canals, or any of them, nor shall any moneys be drawn from the Treasury to be applied to the widening or deepening of any of said canals."

A strict construction of this joint resolution would have compelled an immediate dismissal of the entire repair force on these lines of canal, left the navigation liable to interruption from breaches or other causes, deranged the business of every person using the improvements, and produced a loss of revenue to the Treasury. After a mature consideration of the subject, the Board came to the conclusion that such was not the meaning or intention of the Legislature, and accordingly, on the 22d of April, adopted the following resolution, viz:

"Resolved, That whilst a strict construction of the foregoing resolution of the Legislature would forbid the Board from any further expenditures for the repairs of the lines of canal in operation, and compel them to withdraw all repair force therefrom, and thus endanger the works, and for a time render them useless, greatly to the disadvantage of transporters, and at a loss to the revenue of the State, they deem it their duty, should the Attorney General, State Treasurer and Auditor General concur, to continue a small force on each line, (except the Upper North Branch,) simply sufficient for watching the same and guarding against breaches."

In a consultation held with the officers named in this resolution, it was agreed that the views therein expressed were dictated by sound policy and State necessity, and that the course suggested was such as they believed to have been the intention of the Legislature. Orders were, therefore, immediately issued to each Supervisor, (with the exception of those on the Upper North Branch,) to reduce the force on his line, so that no more men should be employed than might be actually necessary to watch the banks from breaking, and if a break occurred which required more than forty-eight hours to mend it, to report the fact to the Board, before commencing the repair, and await their action. He was also directed not to make any contract, or incur

a debt of any description, without first obtaining the sanction of the Board; and if he did so, without such sanction, the responsibility would rest upon him and his bail.

These orders were promptly carried into effect, and the navigation maintained, without interruption, at a small expense, until the date of transfer. In thus deviating from the strict letter of the joint resolution, and acting upon what they conceived to be the intention of the Legislature, the Board have the satisfaction to know that the works were kept open for transportation, that persons interested in doing business upon the canals were saved from the losses inseparably connected with even a temporary suspension of navigation, and that the State Treasury was benefitted by the excess of receipts over expenditures, for the period between the passage of the sale bill and the day on which the Sunbury and Erie railroad company took possession.

As the work on the Upper North Branch canal was not so far completed as to permit the immediate introduction of the water, the entire force on that line was instantly disbanded.

The following are the receipts and expenditures upon the navigable lines, from the 1st of December, 1857, to the 20th of May, 1858, the day of transfer, viz:

RECEIPTS.

Delaware Division.

Easton.....	\$26,793 14	
New Hope.....	2,561 27	
Bristol.....	2,786 40	
		\$32,140 81

Susquehanna and North and West Branch Divisions.

Beach Haven.....	\$11,493 08	
Northumberland.....	5,828 42	
Williamsport.....	8,736 51	
Dunnsburg.....	5,424 17	
Liverpool.....	6,712 09	
		\$38,194 27

EXPENDITURES.

Delaware Division.

Repairs.....	\$19,817 93	
Out-let, Wells' Falls.....	614 48	
Lock-keepers.....	3,799 84	
Collectors, weigh-masters, inspectors and incidental expenses of their offices.....	1,885 29	
		\$26,117 56

West Branch Division.

Repairs.....	\$28,079 05	
Lock-keepers.....	1,121 00	
Collectors, weigh-masters, inspectors and incidental expenses of their offices.....	1,069 37	
		\$30,269 42

Lower North Branch Division.

Repairs	\$23,871 37	
Lock-keepers	1,343 50	
Collectors, weigh-masters, inspectors and incidental expenses of their offices	1,357 87	
	—————	<u>\$26,572 74</u>

Susquehanna Division.

Repairs	\$22,525 82	
Lock-keepers	1,693 00	
Collectors, weigh-masters, inspectors and incidental expenses of their offices	895 87	
	—————	<u>\$25,114 69</u>

In making a comparison from the foregoing statement between the receipts and expenditures, the fact should not be lost sight of, that the receipts are for only about two months, whilst the expenditures cover a period of nearly six months. It must also be borne in mind, that the largest portion of the repairs for the year is executed in the winter and spring, when the canals are unproductive of tolls—that during that period the materials for whatever repairs may be required during the summer, are purchased, and that the expenditures for ordinary purposes have comparatively ceased at that very point in the season when the revenue begins to accrue.

A large amount of work was done on the lines during the last winter and spring, and when the canals passed into the hands of the company, they were reported to have been in better order than for several years past. The State Engineer, in his report on the operations of the repair department, says: “As the early part of last winter proved unusually favorable, a much larger amount of work than is usual, in the shape of repairs, was accomplished. In addition to the ordinary repairs required at the locks, aqueducts, bridges, waste-wiers, &c., the out-let lock at Loyalsock creek, on the West Branch division, was entirely re-built; several hundred feet of river wall below the Nanticoke dam, on the North Branch division, was raised to guard against overflow during ordinary floods, which have for many years past, not only caused annual damage to the canal bank, but serious detention to the navigation. Numerous sand and gravel bars were removed from the canal bottom, on each of the several divisions. On the Susquehanna division, especially, the material which had been washed in from the slopes, was placed on the top of the towing-path, to such an extent as to form a substantial improvement in the capacity of the canal. The value of the repairs made during the winter, was fully demonstrated on the opening of navigation in the spring, when the canals were found to be in a better condition than they had been for several years past, and notwithstanding the fact, that as soon as the bill for the sale of the canals had become a law, the number of laborers on the several divisions were reduced to a mere watching force, the navigation on all the lines continued uninterrupted by a single accident, up to the day of their transfer.”

Strenuous efforts were being made at the time of the passage of the sale bill, to place the Upper North Branch canal in navigable order at the earliest moment. The force upon it was discharged in accordance with the joint resolution. For a detailed statement of the work done on that line, the Legislature is referred to the accompanying report of the State Engineer.

A large number of claims have been adjusted during the year, under the provisions of the fortieth section of the act of the 18th May, 1857, entitled "An Act to provide for the ordinary expenses of Government, the repairs of the public canals and railroads, and other general and special appropriations;" and of the seventeenth section of the act of the 24th of April, 1858, entitled "An Act to provide for the payment of certain claims against the Commonwealth," some of which were allowed and others rejected. A number of similar claims remain on file, the investigation into the correctness of which has not yet been completed. The Board have afforded every facility in their power to the claimants under these acts. To save the expense to these claimants, which would have been incurred in bringing their witnesses to Harrisburg, meetings of the Board were held at several places along the lines, of which due public notice was given. Under these circumstances, it is evident that no blame can lie at the doors of the officers of the Commonwealth, if claimants have not been heard. The difficulty experienced in the settlement of claims of this character, with a due regard to the interests of the Commonwealth, arises from the fact that many of them are of long standing; that the officers who alone could have the knowledge of the correctness of a claim were either dead or had left the vicinity of the public works; that the Board have no power to compel the attendance of witnesses, and that, consequently, in many instances, the testimony must be of an *ex parte* character. It is respectfully suggested whether, in the future investigation of claims against the public works, it would not be proper to confer the power to subpoena witnesses on behalf of the Commonwealth.

Two or three applications have been made to the Board for the settlement of claims, which had been referred to the Canal Commissioners under acts passed by the Legislature before the approval of the act of the 21st of April, 1858, for the sale of the State canals. The seventh section of the last named act is in the following words, viz :

"That any and all claims for damages or other demands against the Commonwealth, by individuals or companies, in relation to the location, construction, repair, management or use of any of the divisions of canal sold under the provisions of this act, shall, if established, be paid by the purchaser of the proper line or division, the amount to be ascertained and payment thereof made as the Legislature may direct; but in any case the purchaser shall have notice, and an opportunity to be heard against the allowance of such demand: *Provided, however,* That this section shall not relate to any obligation or claim incurred in the construction, management or repair of the said canals for the current fiscal year, and prior to the time of transfer."

The claims referred to fell under the description indicated in the foregoing section. They had been incurred prior to the present fiscal year, and the acts by which they had been referred for the examination of the Canal Commissioners, were passed prior to the date of the sale bill. The Board, therefore, declined to act upon these claims, under the construction which they gave the section just quoted, that it repealed all former acts which came in conflict with its provisions. Before coming to a final decision, they submitted the question to the Attorney General. In his answer to the communication of the Board, he says: "I am of the opinion that the seventh section of the act of the 21st of April, A. D., 1858, entitled 'An Act for the sale of the State canals,' is inconsistent with, and repugnant to, former acts for assessing damages on the canals sold by the Governor to the Sunbury and Erie railroad company, and consequently all such acts are of no binding force or validity. It follows from this, that the Canal Commissioners have no authority to assess damages embraced within the seventh section of the act aforesaid, and that no assess-

ment can be made until legislative action is had providing for assessments, with notice to the purchasers of the proper division of the aforesaid canals.”

Every exertion has been made to liquidate all demands against the public works incurred during the last fiscal year, and it is believed with success, only one or two claims having been presented since the officers closed their final accounts with the Commonwealth. These claimants, with several others who have presented claims, but over which the Board have no control under existing acts of Assembly, must look to the Legislature for some provision for the settlement of their demands.

The State Engineer, after the transfer of the canals, and the closing up of his business thereon, was entrusted with the payment of claims on the Columbia railroad, which, although duly authenticated, had not been presented to the Superintendent for payment before he had settled his account and retired from office. He was likewise sent to the Upper North Branch, with directions to pay the check rolls and bills for materials which had been incurred by Wm. R. Maffet, between the 1st day of December, 1857, and the 10th of February, 1858, the day of Mr. Maffet's resignation. Having performed these duties, Mr. Gay, on the 1st day of October last, resigned as State Engineer, and the office has, as a matter of course, remained vacant. It is due to Mr. Gay to state that, during his recent connection with the public works, he discharged his important duties to the entire satisfaction of the Board. He had, by his undivided attention to the working operations of the canals, introduced a system of economy and efficiency into the department of repairs, which had but just began to develop itself in the increased capacity of the several lines, and the decreased expenditures, when the works passed into other hands.

Some time after the adjournment of the last Legislature, doubts began to be expressed of the constitutionality of the act of the 21st of April, 1858, entitled “An Act for the sale of the State canals.” Citizens from various parts of the State were urgent in their representations to the members of the Board that it was the duty of the Canal Commissioners, from their official relations to the people, to test these doubts before the highest judicial tribunal of the Commonwealth. These representations were strengthened by the submission, in the beginning of August, of the opinion of a jurist distinguished in the legislative annals of Pennsylvania—the Hon. Charles R. Buckalew. That opinion is in the following words, viz :

“That the act of 21st April, 1858, for the sale of the State canals, violates the Constitution of Pennsylvania, manifestly appears from the face of the act itself, independently of the facts outside of the letter of the statute, which are capable of being proved.

“The eleventh article of the Constitution, (being the first of the amendments adopted in 1857,) provides for the establishment of a sinking fund, which ‘*shall consist of the net annual income of the public works, from time to time owned by the State, or the proceeds of the sale of the same, or any part thereof,*’ &c.; further on, ‘no part of the said sinking fund shall be used or applied otherwise than in extinguishment of the public debt, until the amount of such debt is reduced below the sum of five millions of dollars.’

“I regard this as an injunction that income, or, in case of the sale, the value of the works, be irrevocably and fully appropriated to the public creditors; and assert that the Legislature cannot appropriate part of income or value to other uses, nor so sell that full value or price is not obtained. For a mistaken, erroneous judgment as to the value, there may be no judicial remedy, but where it manifestly appears that there was no intention to obtain full consideration, or that part of the consideration is devoted to other uses than the sinking fund,

the act must be held void. And it is clear in this case upon the face of the act itself, that the so-called sale was not for full consideration, and that part of the consideration stipulated, was not to be paid to the sinking fund, and administered and applied to the public creditors by it. The term 'proceeds of sale' obviously means value, price, the equivalent for the works in money or securities that will produce it. Otherwise the section (4) is a farce. For if the sales can be made for other rates than those of value, or portions of the value be shuffled away, the Legislature may squander the works upon any pretence of sale, and the object of the section be wholly or mainly frustrated.

"I regard the following provisions of the bill, as violations of the clause of the eleventh article above cited:

"1. That upon a re-sale *one-fourth* of excess over \$3,500,000 is to be enjoyed by the Sunbury and Erie railroad company. But the whole 'proceeds' must be paid into the sinking fund.

"2. That as part of the consideration entering into the terms of sale, a subscription of \$500,000 is to be made to the stock of the Allegheny Valley railroad company. This is a diversion of a part of the value of the works to the use of a corporation.

"3. That all demands against the State upon the lines of canal sold, be paid to the claimants by the purchaser. But this outlay, whether one or three hundred thousand dollars, as far as it enters into the price, is not an application of the 'proceeds' to the sinking fund, and to be administered through it, as is expressly required.

"4. To the same purpose is the clause that the North Branch shall only be re-sold to residents or property owners along the line. Such a clog upon the purchasers for the advantage of individuals, lessens the price paid the State, just as a condition that a farm sold should only be re-sold to adjoining land owners would affect and lessen its price."

Upon the receipt of this opinion, the Board directed their President to consult with the Hon. Jeremiah S. Black and Wm. L. Hirst, Esq., and if these gentlemen should concur in the views of Mr. Buckalew, to request them to commence the proper proceedings in the Supreme Court, without delay.

The Board felt a great reluctance in the adoption of this course. It was far from their desire to come into even apparent conflict with the action of the Legislative and Executive Departments of the Government, or to do any thing beyond the line of their official duty prejudicial to the Sunbury and Erie railroad. But after mature deliberation, they believed it to be a duty which they owed to the people by whom they had been elected, and by whom they had been entrusted with the charge of important public interests, to discard all seeming indelicacy, and to test the legality of an act which had been pronounced by eminent counsel to be unconstitutional, and which was deemed to have been passed without a full knowledge and consideration of the sacrifice of the public revenues which it involved. Besides, no public harm could be sustained if the decree of the court should be in favor of the points assumed in the application. A subsequent Legislature would have the whole matter under their control, and could correct former errors, if any had occurred, and place a proper estimate upon the value of the works, if it should be determined to dispose of them.

In making up their opinion of the value of the works embraced in the sale bill, the Board were not governed by estimates, but by the recorded facts exhibited by the books of the Accounting Departments. On the 30th of March last, the Auditor General transmitted to the Legislature statements showing the receipts and expenditures for all purposes, on the finished lines embraced

in the bill, for the seven years ending the 30th of November, 1857. These statements, which embrace disbursements for the sum of \$203,303 56, for the enlargement of the Delaware division, and improvements on two other lines, and which had been carried to the construction account, exhibited the following facts :

LINES.	Total expenditures, ordinary and extraordinary.	Total revenue.
Delaware division.....	\$467,859 91	\$2,108,756 05
Susquehanna division.....	247,689 77	346,787 08
North Branch division, Wyoming line....	285,961 77	1,431,295 39
West Branch division, Lycoming line....	300,671 92	482,422 86
Lines in operation.....	1,302,183 37	4,369,261 38
Add from construction account moneys disbursed for enlarging Delaware division, and improvements on two other lines....	203,303 56	
Total expenditures for all purposes.....		1,505,486 93
Net profits for the seven years		2,863,774 45

Equivalent to an interest of five per cent. per annum on a capital of \$8,182,212; or, $11\frac{2}{3}$ per cent. per annum on \$3,500,000, the amount for which the works were sold to the Sunbury and Erie railroad company.

This was one view of the financial part of the question. But there were others which were not passed over. By the report of the Auditor General before referred to, it appears that the total cost of construction of the lines in operation, up to November 30, 1857, was as follows :

Delaware division of canal.....	\$1,543,762 83	
Susquehanna division of canal.....	897,160 52	
North Branch, Wyoming line.....	1,623,117 04	
West Branch, Lycoming line.....	1,833,183 28	
Lines in operation.....		<u>5,897,223 67</u>

The receipts for seven years were.....		\$4,369,261 38
Expenditures as above given.....	1,505,488 93	
Deduct amount disbursed for enlargement of Delaware division, &c., which amount is included in the foregoing statement of cost of construction.....	203,303 56	
		<u>1,302,183 37</u>
Net profits for the seven years.....		<u>3,067,078 01</u>

Equal to an annual interest of near seven and a half per cent. on the cost of construction, or of twelve and a half per cent. annually on the \$3,500,000 for which the works were sold.

Again: The Auditor General states in his report the cost of construction of all these canals to be as follows:

Lines in operation as above.....	\$5,897,223 67
Unfinished lines:—	
North Branch extension, (Tunkhannock and Tioga lines,).....	\$4,643,491 12
West Branch extension, (Tanguascootac and Sinnemahoning lines).....	353,574 78
	4,997,065 90
	10,894,289 57

In this statement of the cost of construction, is included the cost of the unfinished Upper North Branch canal, and of the portions of the West Branch extension abandoned years ago. The Upper North Branch would have been completed, and in navigable order, during the year, and there can be no doubt that, in a very short time, it would have yielded a profitable dividend on the investment. But waiving the impropriety of taking the cost of an unfinished work into the calculation of the actual profits derived from the revenues on these finished works, it appears from the foregoing statements, that the receipts over expenditures on the finished lines for seven years, amounted to \$3,067,078 01, being an interest of over four per cent. per annum on \$10,894,289, the cost of construction of both the finished and unfinished lines, and, as before observed, of twelve and a half per cent. per annum on the \$3,500,000 for which they were sold, and on which the Sunbury and Erie railroad company pay but five per cent. If the portion of the tolls due to the forty-five miles of the Eastern division, extending from Duncan's Island to Columbia, be deducted from this statement, together with the amount charged to the cost of construction for the long abandoned portions of the West Branch division, the aggregate results arrived at will not be materially affected.

Entertaining these views of the financial operations of the law, and having been advised by eminent counsel of its unconstitutionality, the Board unanimously directed the question to be tested. Before, however, the case was fully prepared, the Sunbury and Erie railroad instituted proceedings in the Supreme Court against Lewis Cooper, to compel the specific performance of a contract which he had entered into with the company, for the purchase of certain bonds of the Delaware division canal company, the vendee of the Sunbury and Erie railroad company, with which contract Mr. Cooper refused to comply, on the ground of the presumed unconstitutionality of the law authorizing the sale. As the points involved in this suit were similar in character to those which the Canal Commissioners intended to bring to the attention of the court, the counsel of the Board were directed, if they thought it expedient, to appear on behalf of the Board, provided that in so doing, the case and the interests of the Commonwealth were not thereby prejudiced. The case came up at Sunbury, in October last, and after argument, the Judges who heard the case, directed a decree to be entered at *Nisi Prius* against Mr. Cooper, with the right of an appeal to the court in banc. No appeal has yet been taken, nor has any new bill been filed by the Commonwealth. Whether it is proper or not, at the present time, to do either, is a question not yet decided. The counsel employed on the part of the Commonwealth, have expressed their decided conviction, in which the Board concur, that nothing has yet been done which can bar the rights of the State.

It is enjoined by law upon the Board to report their proceedings to the Legislature. In doing so, in this case, they have given the reasons which

governed their action in the premises, as briefly and as fairly as it is possible for them to do.

A few words on another subject which the Board deem it their duty to notice, will close this report.

If the sale of the canals to the Sunbury and Erie railroad company is considered a fixed fact, then the Commonwealth has parted with all her public works, constructed at an aggregate cost of about thirty-five millions of dollars.

To represent these improvements, erected at such a large cost, the State has the bonds of the Pennsylvania railroad company, the bonds of the Sunbury and Erie railroad company, and the tonnage tax, as sources of revenue towards meeting the interest and liquidating the debt, to which purposes the works and their proceeds had been pledged.

The Board include the tonnage tax, because it was the consideration for the depreciation in the value of the State improvements caused by the construction of competing company works, and it stands now as it was originally understood and intended to be, a compensation to the State for that depreciation. To repeal it, or release it without a fair consideration, would be to fasten upon the people an amount of the public debt which, in justice, should be met by this tax.

It is but due to the Commonwealth and her citizens, that all these sources of revenue be held sacred for the objects to which the works which they represent, and the revenues therefrom, were pledged. If one be relinquished, or released without full consideration to the State, it is to be feared that such act would prove the precursor of the relinquishment of the others.

All of which is respectfully submitted.

A. PLUMER,
GEORGE SCOTT,
N. STRICKLAND.

AT SAT

THE STATE OF NEW YORK

